IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 31 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA :

HONOURABLE MR.JUSTICE KS JHAVERI :

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge

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BAHUDAR TARSHIBHAI VAGHELA- DEVIPUJAK - Appellant(s)
Versus
THE STATE OF GUJARAT - Opponent(s)

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Appearance :
MS REKHA H KAPADIA for Appellant(s) : 1,
MR KP RAVAL APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 10/09/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE KS JHAVERI)

1.0 This appeal is directed against the judgment and order dated 2nd November, 2004 passed by the learned Addl. Sessions Judge & Presiding Officer, Fast Track Court No. 9, Gondal in Sessions Case No. 69 of 2003 whereby, the appellant was convicted for the offences punishable u/s. 498-A & 302 of the Indian Penal Code, 1860 [for short, "the I.P.C."]. For conviction u/s. 498-A of I.P.C., the appellant was sentenced to undergo Rigorous Imprisonment for two years with fine of Rs.1000/- and in default of payment of fine, Rigorous Imprisonment for a further period of two months; while for conviction u/s. 302 of IPC, the appellant was sentenced to undergo Rigorous Imprisonment for life with fine of Rs.2000/- and in default of payment of fine, Rigorous Imprisonment for a further period of three months. Both the sentences were ordered to run concurrently. The appellant was also given the benefit of set-off.

2.0 The brief facts of the prosecution case are as under ;

2.1 The appellant was residing alongwith his family consisting of his wife and four children in Jamkandorana Village of Rajkot District. However, some time earlier to the incident in

question, one of their sons expired. On 22.05.2003, at around 1730 hrs., a quarrel took place between the appellant and the deceased as a result of which the appellant got enraged. Ultimately, the appellant poured kerosene on the deceased by taking out the same from a kerosene-lit lamp and, thereafter, set the deceased ablaze.

2.2 On hearing the shouts of the deceased, the in-laws of the deceased reached the scene of offence and when they tried to rescue the deceased, the appellant prevented them from doing so, on account of which a scuffle took place between the appellant and his father.

2.3 In the meanwhile, the deceased ran to the house of his brother, which was situated in the neighborhood. However, by that time, the deceased had suffered severe burn injuries. Therefore, they took her to Jamkandorana Health Centre for necessary medical treatment.

2.4 In the said Hospital, the deceased narrated the history

of the incident to the Medical Officer who was on duty at the relevant point of time. The Medical Officer, then, telephonically informed about the said incident to the police authority of Jamkandorana Police Station. On receipt of the said information, the P.S.O. made entry to that effect in the Station Register vide 'Janwajog' Entry No. 20 of 2003. The police authority arrived at the said Hospital and recorded the complaint of the deceased, which came to be registered as I – C. R. No. 39 of 2003 for offences punishable u/s. 307, 498-A and 323 of the IPC.

2.5 On 23.05.2003, at around 0015 hrs., the deceased was shifted to Junagadh Civil Hospital. At Junagadh Civil Hospital also, the deceased narrated the history of the incident to the Medical Officer who was on duty at the relevant point of time. Thereafter, from the said Hospital, a 'yaadi' was sent to the concerned Executive Magistrate for the purpose of recording the Dying Declaration of the deceased. After receipt of the same, the concerned Executive Magistrate recorded the dying declaration of the deceased. 'Panchnama' of the scene of offence was done in the morning hours of 23.05.2003 and 'muddamal' articles were also

collected. The said articles were then sent to F.S.L. for examination. Further investigation was carried out and statements of several witness were recorded.

2.6 On 26.05.2003 the Investigating Officer of Jamkandorana Police Station recorded the additional statement of the deceased in Junagadh Civil Hospital. In the additional statement also, the deceased narrated the history of the entire incident to the Investigating Officer.

2.7 On 28.05.2003, as the condition of the deceased had started deteriorating, she was shifted to a Private Hospital at Dhoraji. In the said Hospital also, the deceased narrated the history of the incident to the Doctor who had treated her. In the meanwhile, the appellant surrendered himself before Jamkandorana Police Station. Arrest 'Panchnama' was prepared and a 'Panchnama' with respect to the physical condition of the appellant was also carried out. The appellant was then sent to judicial custody.

2.8 As there was no improvement in the condition of the deceased, she was shifted to Rajkot Civil Hospital. At Rajkot Civil Hospital also, the deceased narrated the history of the incident to the Medical Officer who was on duty at the relevant point of time. However, on 29.05.2003, at around 0515 hrs., the deceased succumbed to the injuries. 'Marnottar' form was filled up and the dead body of the deceased was sent for performing post-mortem. After receipt of the F.S.L. Report, PM Note and the Medical Report, they were kept along with the investigation papers.

2.9 On completion of the investigation, charge-sheet was filed against the appellant before the Court of learned Judicial Magistrate, First Class, Dhoraji and as the case was exclusively triable by the Court of Sessions, the same was committed to the Sessions Court, Gondal and it was numbered as Sessions Case No. 164 of 2004. Subsequently, the matter was transferred to the Court of learned Addl. Sessions Judge & Presiding Officer for disposal on merits. As the appellant pleaded not guilty to the said charge, trial was initiated against him.

3.0 The prosecution has examined in all thirty seven witnesses in order to prove the guilt against the appellant. PW – 1 Champaben w/o. Bawanjibhai at Exhibit – 5, PW – 2 Champaben w/o. Pathubhai at Exhibit – 6, PW – 3 Gangaben w/o. Bhalubhai at Exhibit – 7, PW – 4 Gangaben w/o. Talshibhai at Exhibit – 8, PW – 5 Keshubhai Ranabhai at Exhibit – 9, PW – 6 Vallabhdas Gangadas Savaliya at Exhibit – 10, PW – 7 Gandubhai Pathubhai at Exhibit – 11, PW – 8 Balwantlal Gandalal at Exhibit – 12, PW – 9 Kirpalsinh Abhaysinh Jadega at Exhbit – 13, PW – 10 Bawanji Bhalubhai Jakhadiay at Exhibit – 14, PW – 11 Gulabsinh Tapubha at Exhibit – 15, PW – 12 Manojbhai Dharamsinhbhai at Exhibit – 16, PW – 13 Talshibhai Ramjibhai at Exhibit – 17, PW – 14 Dr. Ashwinkumar Devrajbhai at Exhibit – 20, PW – 15 Dr. Khimjibhai Mohanbhai at Exhibit – 30, PW – 16 Dr. Arvindbhai Ratilal Vithlani at Exhibit – 33, PW – 17 Dr. Balchandra Narmadashankar at Exhibit – 39, PW – 18 Ranaju Bahadur at Exhibit – 43, PW – 19 Vikramsinh Mahipatsinh, PSO at Exhibit – 44, PW – 20 Ramzanbhai Subharbhai at Exhibit – 69, PW – 21 Manjuben w/o. Ramubhai at Exhibit – 48, PW – 22 Mohannath Bhannath at Exhibit – 49, PW – 23 Bhulabhai Dahyabhai at Exhibit – 50, PW –

24 Labhuben w/o. Laghra Bhalu at Exhibit – 51, PW – 25 Ghaniben w/o. Vala Dalabhai at Exhibit – 52, PW – 26 Pathubhai Ramjibhai Vaghela at Exhibit – 53, PW – 27 Narubhai Valabhai at Exhibit – 54, PW – 28 Jaksibhai Talshibhai at Exhibit – 55, PW – 29 Laghra Bhalubhai at Exhibit – 56, PW – 30 Ramuben w/o. Ukabhai at Exhibit – 27, PW – 31 Praful Nandlal Patadiya at Exhibit – 58, PW – 32 Bhagwatsinh Shivubha at Exhibit – 60, PW – 33 Pranjivan Raghavjibhai at Exhibit – 61, PW – 34 Dr. Mukesh Revashankar Mehta at Exhibit – 65, PW – 35 Dr. Dhansukh Govindbhai Solanki at Exhibit – 69, PW – 36 Pravinsinh Bavubha Jhala at Exhibit – 70, PW – 37 Rajeshbhai Mansukhlal Vadukiya at Exhibit – 83.

3.1 The prosecution has also relied upon several documentary evidence and, more particularly, the evidence in the form of depositions of the Medical Officers / Doctor who have examined the deceased, the complaint of the deceased at Exhibit – 71, her additional statement recorded by the Investigating Officer at Exhibit – 75 and the dying declaration at Exhibit – 85 and the arrest 'Panchnama' of the appellant performed at the time of his

arrest at Exhibit – 74.

3.2 On submission of the closing 'purshis', the further statement of the appellant was recorded u/s. 313 of the Code of Criminal Procedure, 1973. After hearing learned counsel for the respective parties, the learned Addl. Sessions Judge & Presiding Officer passed the impugned judgment and order and convicted the appellant for the offence as narrated in the earlier part of this judgment. Hence, the present appeal.

4.0 When the matter came up for admission hearing, Ms. Rekha H. Kapadia learned Advocate for the appellant requested that she would like to go through the Records & Proceedings available with the Court. Accordingly, with a view to protect the interest of the appellant, the matter was adjourned, so as to enable learned Advocate for the appellant to go through the Records & Proceedings. Ultimately, the matter was finally heard today at length.

5.0 Ms. Rekha H. Kapadia learned Advocate for the

appellant has submitted that the deceased was never interested to perform her marital obligations and that she used to leave the matrimonial home at regular intervals on one or the other pretext. She has submitted that the appellant cannot be held guilty for the offence of 'murder' as the deceased had committed 'suicide' at her own will for the reasons stated hereinabove. She has contented that even if the appellant is said to have committed the alleged offence, he could not be held guilty for the same as there are no eye-witness/s to the incident.

5.1 Learned Advocate has further contented that so far as the injury sustained by PW – 13 is concerned, the same has been sustained by him while he was doing labour work in his hut and not on account of the alleged push given by the appellant at the time when the said witness had tried to rescue the deceased. She has, therefore, submitted that in the absence of cogent evidence on record against the appellant, the appellant cannot be held guilty for the alleged offence in question and is required to be acquitted.

6.0 Heard learned Advocate for the appellant and perused

the oral as well as documentary evidence on record as shown to us by learned Advocate for the appellant. It is a matter of record that before the deceased succumbed to the injuries in the early morning hours of 29.05.2003, she was examined by not less than four Doctors at four different Hospitals. Firstly, the deceased was examined by the Medical Officer of Jamkandorana Health Centre on 22.05.2003 secondly, by the Medical Officer of Junagadh Civil Hospital on 23.05.2003 thirdly, by the Doctor of a Private Hospital at Dhoraji on 28.05.2003 and lastly, by the Medical Officer of Rajkot Civil Hospital on the same day, i.e. on 28.05.2003.

6.1 It is also a matter of record that before all these Medical Officers / Doctor, the deceased narrated the history of the incident in question wherein, the role played by the appellant has been specifically mentioned. In order to prove the same, the prosecution has examined the said Medical Officers / Doctor, who have deposed as PW – 16 at Exhibit – 33, PW – 17 at Exhibit – 39, PW – 15 at Exhibit – 30 and PW – 14 at Exhibit – 20. All these witnesses have categorically deposed about the story narrated by the deceased and the role played by the appellant in the

commission of the offence in question. Nothing incriminating has come on record from the cross-examinations of these witnesses, which may lead us to believe their evidence to be untrue or unreliable. Hence, we accept the evidence led by the aforesaid witnesses in its entirety.

7.0 Apart from the above, the prosecution case also gets ample support from the documentary evidence led in the form of the complaint of the deceased at Exhibit – 71, the additional statement of the deceased recorded by the Investigating Officer at Exhibit – 75 and the Dying Declaration at Exhibit – 85. It may be noted that while recording the abovesaid evidence, the concerned Investigating Officer / Executive Magistrate had taken necessary care and caution as regards the physical condition of the deceased to depose at the relevant point of time. To prove the same, the prosecution has examined the concerned Investigating Officer as PW – 36 at Exhibit – 70 and the Executive Magistrate as PW – 37 at Exhibit – 83. Nothing incriminating has come out from the cross-examinations of these two witnesses which may lead us to believe their evidence to be unreliable.

7.1 Thus, the role played by the appellant has been categorically narrated in all the aforesaid seven dying declarations, viz. the history narrated before the four Medical Officers / Doctor, the complaint at Exhibit - 71, the additional statement of the deceased at Exhibit – 75 and the Dying Declaration at Exhibit – 85. All the seven dying declarations are consistent all throughout and we find the same to be wholly reliable, trustworthy and free from all doubts.

7.2 The law on the subject is well settled. In a recent decision of the Hon'ble Apex Court in the case of ***Smt. Shakuntala v/s. State of Haryana*** reported in ***2007(5) Supreme Today 668***, the Apex Court has narrated the principle on which dying declaration can be admitted in evidence. It has been held therein that dying declaration should be of such a nature as to inspire full confidence of the Court in its correctness. However, it cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. In the case on hand, we find the dying declarations to be wholly

trustworthy and free from all doubts and are of the opinion that conviction can be based on it, without any corroboration. In that view of the matter, the contention raised by learned Advocate for the appellant that the cause of death of the deceased was 'suicide' and not 'murder' deserves to be rejected, as being baseless and devoid of any merits.

8.0 The prosecution has examined the father and mother of the appellant as PW – 13 at Exhibit – 17 and PW – 4 at Exhibit – 8 respectively. Both these witnesses have been declared as 'hostile' by the Court below. However, the role played by both these witnesses can be clearly borne out from the complaint of the deceased at Exhibit – 71 as also from the additional statement of the deceased, recorded by the Investigating Officer, at Exhibit – 75. It has been specifically stated therein that on hearing the shouts of the deceased, both these witnesses reached the scene of offence and on noticing the deceased burning, they tried to rescue her. However, the appellant prevented them from doing so and picked up a quarrel with PW – 13 which, subsequently, took the face of a scuffle. In that process, the appellant pushed PW – 13

on account of which this witness fell down and sustained injuries on his leg.

8.1 Thus, the evidence on record, as discussed hereinabove, describes the individual role played by both these witnesses, which clearly leads us to arrive at the conclusion that both these witnesses were eye-witnesses to the said incident. Since these witnesses are parents of the appellant that might be the reason that they have not supported the case of the prosecution, though the evidence on record proves the presence of the appellant at the scene of offence. Hence, the probability cannot be ruled out that the so-called injury sustained by PW – 13 on his leg was on account of the push given by the appellant when he tried to rescue the deceased.

9.0 The arrest 'Panchnama' of the appellant, performed at the time when he surrendered to the custody, also supports the case of the prosecution. From the said 'Panchnama', it clearly appears that the appellant had sustained burn injuries on his hands and that they had not completely healed-up at the time when the

said 'Panchnama' was performed, meaning thereby that the said injuries were still fresh. The said fact firmly leads us to believe that the injuries in question were sustained by him at the time of committing the offence in question, which is supported by the evidence led by the father and mother of the appellant as PW – 13 at Exhibit – 17 and PW – 4 at Exhibit – 8 respectively. Be that as it may, the role of the appellant is clear from the evidence led by the deceased in the form of the seven dying declarations which, in our opinion, are truthful and reliable, as discussed in the earlier part of this judgment. Thus, the contention raised by learned Advocate for the appellant that the appellant was not present in the house at the relevant point of time also holds no ground in view of the evidence on record and deserves to be rejected. No other contentions have been raised by learned Advocate for the appellant.

10.0 So far as the aspect of homicidal death is concerned, the same was not disputed before the Court below and has not been disputed even before this Court. In that view of the matter, we are not discussing the same in detail and, accordingly, have no hesitation in holding that the deceased died a homicidal death.

11.0 In view of the above discussion, we are of the considered opinion that the prosecution has succeeded in proving beyond doubt the guilt of the the appellant. The PM Note, F.S.L. Report and the medical evidence on record in the form of case-papers of the deceased also support the case of the prosecution. We are in complete agreement with the reasonings given by and the findings arrived at by the Court below and, hence, find no reasons to interfere in this appeal.

12.0 In the result, the appeal is summarily dismissed. Office is directed to sent the Records & Proceedings to the trial Court concerned forthwith.

[R. P. Dholakia, J.] [K. S. Jhaveri, J.]

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